

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
PUBLIC SERVICE WIRELESS	)	AU Docket No. 06-30
SERVICES, INC.	)	
	)	
Request for Reconsideration of Public Notice	)	
Revising the Schedule, Filing Requirements and	)	
Supplemental Procedures for the Auction of	)	
Advanced Wireless Services Licenses in the 1710-	)	
1755 MHz and 2110-2155 MHz Bands	)	

**MEMORANDUM OPINION & ORDER**

**Adopted: March 8, 2007**

**Released: March 9, 2007**

By the Commission:

1. In this Order, we address the request submitted by Public Service Wireless Services, Inc. (“PSWS”) on June 12, 2006, for reconsideration of the Commission’s decision to revise the schedule and certain procedures for the auction of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz (“AWS-1”) bands (Auction No. 66).<sup>1</sup> Specifically, PSWS opposes the Commission’s decision to extend the deadline for filing short-form applications to participate in Auction No. 66 and to allow parties that had not filed by the initial deadline to submit short-form applications.<sup>2</sup> For the reasons set forth below, we deny PSWS’s request.

2. On January 31, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,<sup>3</sup> the Wireless Telecommunications Bureau (“Bureau”) released a public notice announcing the auction of AWS-1 licenses and seeking comment on the procedures, minimum opening bids, and reserve price for Auction No. 66, which was originally scheduled to begin on June 29, 2006.<sup>4</sup> Interested parties submitted 54 comments and 16 reply comments in response to the *Auction No. 66 Comment Public Notice* as well as a number of *ex parte* or late-filed submissions. On April 12, 2006, the Commission announced the procedures, minimum opening bids, and reserve price for Auction No. 66.<sup>5</sup>

<sup>1</sup> See “Auction of Advanced Wireless Services Licenses Rescheduled for August 9, 2006; Revised Schedule, Filing Requirements and Supplemental Procedures for Auction No. 66,” *Public Notice*, 21 FCC Rcd 5598 (2006) (“*Auction No. 66 Supplemental Procedures Public Notice*”).

<sup>2</sup> PSWS’s letter opposing the decision to reopen the short-form application filing window is effectively a request for reconsideration of the Commission’s action. See Letter of Edward K. Bond, Director, Public Service Wireless Services, Inc., to Chairman Kevin Martin, dated June 12, 2006 (“Request”).

<sup>3</sup> 47 U.S.C. § 309(j)(3)(E)(i) (requirement to seek comment on proposed auction procedures); see also 47 U.S.C. § 309(j)(4)(F) (authorization to prescribe reserve price or minimum bid).

<sup>4</sup> “Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures,” *Public Notice*, 21 FCC Rcd 794 (2006) (“*Auction No. 66 Comment Public Notice*”).

In order to participate in the auction, an interested party was required to submit a short-form application (FCC Form 175) by May 10, 2006.<sup>6</sup>

3. On May 19, 2006, the Commission announced a revised schedule, filing requirements and supplemental procedures for Auction No. 66.<sup>7</sup> The Commission rescheduled the start of the auction from June 29, 2006 to August 9, 2006 and extended the deadline for filing short-form applications to June 19, 2006.<sup>8</sup> As noted in the *Auction No. 66 Supplemental Procedures Public Notice*, the Commission made these changes to provide additional time for preparation and planning to those entities wishing to participate in the AWS-1 auction.<sup>9</sup> The Commission also specifically stated that any party could submit a short-form application to participate in Auction No. 66 by the new June 19, 2006, deadline, regardless of whether that party previously submitted an application pursuant to the prior deadline.<sup>10</sup>

4. On June 12, 2006, one week before the new short-form application deadline, PSWS submitted a letter opposing the Commission's decision to reschedule the auction and to open the short-form application filing window to any party, regardless of whether it had submitted an application by the original deadline of May 10, 2006.<sup>11</sup> PSWS argues that allowing entities that had not filed in the first filing window to submit short-form applications during a second filing window is unfair to entities like PSWS that filed their short form applications in the first filing window.<sup>12</sup> PSWS further argues that allowing entities that had not submitted short-form applications by the May 10 deadline to participate in Auction No. 66 creates more competition for those applicants who had filed by the original deadline, resulting in higher bids for the licenses.<sup>13</sup> On this basis, PSWS requests that the Commission allow only those parties that submitted short-form applications by the first short-form filing deadline to participate in Auction No. 66.<sup>14</sup>

5. Under Section 1.2104(i) of the Commission's rules, the Commission may "delay, suspend or cancel an auction . . . for any [ ] reason that affects the fair and efficient conduct of the competitive bidding" and it has the authority, at its own discretion, to resume the competitive bidding or

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<sup>5</sup> "Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66," *Public Notice*, 21 FCC Rcd 4562 (2006) ("*Auction No. 66 Procedures Public Notice*").

<sup>6</sup> *Auction No. 66 Procedures Public Notice*, 21 FCC Rcd at 4592 ¶ 99.

<sup>7</sup> *Auction No. 66 Supplemental Procedures Public Notice*, 21 FCC Rcd at 5598.

<sup>8</sup> *Id.* at 5599.

<sup>9</sup> *Id.* On April 25, 2006, the Commission adopted new rules governing eligibility for designated entity benefits. Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 4753 (2006) (71 Fed. Reg. 26245, May 4, 2006) ("*Designated Entity Second Report and Order*"), *Order on Reconsideration of the Second Report and Order*, 21 FCC Rcd 6703 (2006), petitions for reconsideration pending. As stated in the *Designated Entity Second Report and Order*, the new designated entity rules adopted therein would apply to Auction No. 66. *Designated Entity Second Report and Order* at 4771 ¶¶ 51-52.

<sup>10</sup> *Auction No. 66 Supplemental Procedures Public Notice*, 21 FCC Rcd at 5599.

<sup>11</sup> *See, generally*, Request.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1.

cancel the competitive bidding in its entirety.<sup>15</sup> Consistent with, and as a function of, its authority to delay or suspend an auction, the Commission may also revise the deadline for filing short-form applications to participate in an auction. In the past, we have revised the short-form application deadline for previous auctions when doing so served the public interest.<sup>16</sup> Our postponement of the auction in this case served the public interest in that it provided applicants with additional time for preparation in light of recent changes in the designated entity eligibility rules.<sup>17</sup> Thus, our decision to delay the start of Auction No. 66 and to revise the deadline for filing short-form applications to participate in the auction was within our discretion, consistent with Commission precedent, and served the public interest. Therefore, we find that PSWS's opposition to the Commission's decision to reschedule the auction and to revise the short-form application filing deadline lacks merit.

6. We likewise reject PSWS's argument that the Commission should have limited participation in Auction No. 66 to only those entities that had submitted short-form applications by May 10, 2006. PSWS asserts that, because the Commission had just adopted changes to its designated entity rules, entities had to "scramble to interpret the FCC's new rules, develop an auction strategy, and file short-form applications by May 10, 2006."<sup>18</sup> PSWS concludes that allowing entities that did not previously submit timely filed short form applications to participate in the auction would be unfair to entities like itself that "spent a good amount of time and resources" to meet the original short-form application deadline because doing so would result in greater competition in Auction No. 66 and higher prices for AWS-1 licenses.<sup>19</sup>

7. PSWS's argument, however, is based on a misunderstanding of the purpose of the short-form application filing deadline. The ultimate purpose of auction filing deadlines is "to create a known pool of auction participants by a date certain, not to curtail competition in the auction process or afford protected status to applicants with accepted applications."<sup>20</sup> As stated in *Elleron*, the Commission is "obligated to protect the public interest, not individual applicants, and to promote recovery of the value of the public spectrum resource."<sup>21</sup> The filing of an initial short-form application to participate in Auction No. 66 did not confer any right or protected status onto such applicants and it did not limit the Commission's discretion under Section 1.2104.

<sup>15</sup> 47 C.F.R. § 1.2104(i). *See also* 47 U.S.C. § 309(j)(15)(A) ("the Commission shall determine the timing of and deadlines for the conduct of competitive bidding . . . including the timing of and deadlines for qualifying for bidding").

<sup>16</sup> *See, e.g.*, Wireless Telecommunications Bureau Postpones February 18, 1997 Auction Date for 981 Interactive Video And Data Service (IVDS) Licenses, *Public Notice*, 12 FCC Rcd 1389 (1997); Auction of Licenses for Lower and Upper Paging Postponed Until October 30, 2001, *Public Notice*, 16 FCC Rcd 11113 (2001).

<sup>17</sup> *See, supra*, para. 3 and n.9.

<sup>18</sup> Request at 2. PSWS argues that the decision to allow entities that had not filed applications in the first filing window gives these entities "an extra bite at the auction apple." *Id.*

<sup>19</sup> *Id.* PSWS asserts that this "[g]reater competition in an already highly competitive auction will drive up the price of the licenses," which it argues is "particularly harmful to rural carriers like PSWS who cannot afford to compete with the larger carriers that have unlimited amounts of money to spend on spectrum." *Id.*

<sup>20</sup> *Elleron Oil Company WVI Partners, Inc. Petition for Reconsideration of Dismissal of Short-Form Applications for Interactive Video and Data Service Auction, Order*, 13 FCC Rcd 17246, 17250 ¶ 8 (WTB 1998) ("*Elleron*"). *See also* In the Matter of Implementation of Competitive Bidding Rules to License Certain Rural Service Areas, WT Docket No. 01-32, *Report and Order*, 17 FCC Rcd 1960 at n.43 (2002) (citing *Elleron*, 13 FCC Rcd at 17250 ¶ 8). Filing deadlines serve to reduce the administrative burdens on bidders and the FCC, and to minimize the potential for delays. *Elleron*, 13 FCC Rcd at 17250 ¶ 8.

<sup>21</sup> *Elleron*, 13 FCC Rcd at 17250 ¶ 8.

8. Moreover, as further noted in *Elleron*, the competitive bidding process generally benefits from additional bidder participation.<sup>22</sup> In the instant case, we postponed the auction and extended the short-form application filing period “to provide applicants additional time for preparation and planning” for the auction.<sup>23</sup> As PSWS itself argued, parties had little time between the release of the revised designated entity rules and the original deadline for filing short-form applications for Auction No. 66. Under the circumstances, we reopened the filing window to provide additional time to all interested parties, including those who were unable to meet the first deadline as well as those who had difficulty in doing so.<sup>24</sup> Extending the deadline increased the likelihood that the parties bidding on the licenses would be those that value them most highly, thus promoting several statutory objectives, including rapid deployment of new technologies and services for the benefit of the public and efficient and intensive use of the electromagnetic spectrum.<sup>25</sup>

9. Accordingly, IT IS ORDERED that, pursuant to the authority granted in Sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(j), and Section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, the request by Public Service Wireless Services, Inc. filed on June 12, 2006, to reconsider the Commission’s action, announced in the *Auction No. 66 Supplemental Procedures Public Notice*, revising the schedule and certain procedures for the auction of AWS-1 licenses (Auction No. 66) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>22</sup> *Id.* at 17250 ¶ 8 (contrasting the auction process to comparative hearings).

<sup>23</sup> *Auction No. 66 Supplemental Procedures Public Notice*, 21 FCC Rcd at 5598.

<sup>24</sup> *Cf. Council Tree Communications, Inc. v. FCC*, No. 06-2943 (3d Cir. June 15, 2006) (per curiam) (denying a motion for stay of Auction No. 66 pending judicial review of movants’ challenge to the revised designated entity rules).

<sup>25</sup> *See* 47 U.S.C. § 309(j)(3).